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SOUTHERN DISTRICT OF CALIFORNIA

BY: EC DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

GARY LEE HENSLEY et. al.,  
Plaintiffs,  
vs.  
CITY OF SAN BUENAVENTURA;  
MIKE FREEMAN DBA SAN  
BUENAVENTURA FREEWAY  
MINI, A.K.A. FREEWAY  
MINISTORAGE et. al.,  
Defendants.

CASE NO. 07-CV-0398 W (NLS)

ORDER  
(1) GRANTING THE CITY OF  
SAN BUENAVENTURA'S  
MOTION TO DISMISS AND  
(2) GRANTING MIKE  
FREEMAN DBA SAN  
BUENAVENTURA FREEWAY  
MINI'S MOTION TO DISMISS  
(Doc. Nos. 55, 57)

On December 28, 2007 Plaintiffs Gary Lee Hensley and Wanda Renault Hensley ("Plaintiffs") filed their second amended complaint against Defendant United States Drug Enforcement Administration ("DEA"), Defendant City of San Buenaventura ("City"), and Defendant Mike Freeman ("Freeman") alleging various Constitutional and civil rights violations and seeking injunctive relief. (Doc. No. 47.) On January 16, 2008 the City filed a motion to dismiss, and on January 28, 2008 Freeman filed a motion to dismiss. (Doc. Nos. 55, 57.) The Court decides both matters on the papers submitted and without oral argument. See S.D. Cal. Civ. R. 7.1(d.1). For the following reasons, the Court **GRANTS** both Defendant City's and Defendant Freeman's

1 motions to dismiss **WITH PREJUDICE**.

2  
3 **I. BACKGROUND**

4 Plaintiffs Gary Lee Hensley and Wanda Renault Hensley are California citizens,  
5 residing in Ventura County, who owned and operated a Ventura County business entity  
6 called Electronic Systems Repair. (*Second Amended Complaint* [hereinafter SAC] 1–2.)  
7 On December 20, 1991 Defendants DEA and City allegedly searched Plaintiffs’  
8 residence and business, seized Plaintiffs’ property, and arrested Gary Lee Hensley on  
9 drug charges. (SAC 3–7.) Legal wrangling over the forfeiture of Plaintiffs’ property  
10 commenced. (*Id.*)

11 Defendant Mike Freeman is the owner of San Buenaventura Freeway Mini, a.k.a.  
12 Freeway Ministorage, a California business entity. (SAC 3.) On September 19, 2001  
13 and January 14, 2002, Plaintiffs executed two leases with Freeman’s business for the use  
14 of a self-storage unit. (*Id.*) In early February 2003, Plaintiffs allege that Freeman  
15 refused access to their unit, and shortly thereafter auctioned their property. (*Id.*)

16 On March 1, 2007 Plaintiffs filed a complaint against the City, DEA, and  
17 Freeman alleging constitutional rights violations, unlawful search and seizure, and  
18 conversion of business property. (Doc. No. 1.) On May 21 and 22, 2007 the City and  
19 Freeman moved to dismiss Plaintiffs’ complaint for failure to state a claim and lack of  
20 subject matter jurisdiction. (Doc. Nos. 8, 11.) On July 25, 2007 the Court granted  
21 Defendants’ motions, dismissed Plaintiffs’ entire complaint, and granted Plaintiffs leave  
22 to amend. (Doc. No. 23.)

23 On August 31, 2007 Plaintiffs filed their first amended complaint (“FAC”),  
24 alleging the same or similar claims on roughly the same facts. (Doc. No. 25.) On  
25 September 12 and 17, 2007 the City and Freeman again moved to dismiss the FAC for  
26 failure to state a claim and on jurisdictional grounds. (Doc. Nos. 27, 29.) On October  
27 24, 2007, despite a failure to timely serve Defendants, the Court accepted Plaintiffs’  
28 opposition. On November 28, 2007, the Court granted the City’s and Freeman’s

1 motions to dismiss, and dismissed Plaintiffs' FAC as to all Defendants. (Doc. No. 38.)  
2 However, the Court again granted Plaintiffs thirty days to amend and re-file their  
3 complaint.

4 On December 28, 2007 Plaintiffs filed their second amended complaint ("SAC")  
5 alleging undetermined claims on roughly the same facts.<sup>1</sup> (Doc. No. 47.) On January  
6 8, 2008 the DEA filed a motion to dismiss Plaintiffs' SAC. On February 13, 2008 the  
7 Court granted the DEA's motion with prejudice and dismissed the DEA from the case.  
8 (Doc. No. 58.)

9 On January 16 and 28, 2008 the City and Freeman, respectively, filed motions  
10 to dismiss Plaintiffs' SAC. (Doc Nos. 55, 57). On February 25, 2008 Plaintiffs filed a  
11 response in opposition to Freeman's motion to dismiss, (Doc. No. 60.), but failed to file  
12 a response in opposition to the City's motion to dismiss. This Order will resolve both  
13 Defendants' pending motions to dismiss.

## 14 15 II. LEGAL STANDARD

16 Rule 12(b)(6) permits the court to dismiss a complaint, or a count therein, for  
17 failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A  
18 motion to dismiss under this rule tests the complaint's sufficiency. See N. Star Int'l v.  
19 Ariz. Corp. Comm'n, 720 F.2d 578, 581 (9th Cir. 1983). Dismissal of a claim according  
20 to this rule is proper only in "extraordinary" cases. United States v. Redwood City, 640  
21 F.2d 963, 966 (9th Cir. 1981). However, where the facts and dates alleged in the  
22 complaint indicate the claim is barred by the statute of limitations, a motion to dismiss  
23 for failure to state a claim is appropriate. Jablon v. Dean Witter & Co., 614 F.2d 677,  
24 682 (9th Cir. 1980).

25 Generally, the court may not consider material outside the complaint when  
26 ruling on a motion to dismiss. Hal Roach Studios, Inc. v. Richard Feiner & Co., 896

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27  
28 <sup>1</sup>Unlike Plaintiffs' earlier complaints, the SAC reads more like an appellate brief. Its  
allegations are not contained in paragraph form, and nowhere (aside from the caption) do  
Plaintiffs actually identify their cause(s) of action.

1 F.2d 1542, 1555 n.19 (9th Cir. 1990). However, the court may consider any documents  
2 specifically identified in the complaint whose authenticity is not questioned by the  
3 parties. Fecht v. Price Co., 70 F.3d 1078, 1080 n.1 (9th Cir. 1995). Moreover, the  
4 court may consider the full text of those documents, even when the complaint quotes  
5 only selected portions. Id. Thus, the Court will consider the search warrant that  
6 Plaintiffs refer to in their Complaint and Defendant City attaches to their Motion to  
7 Dismiss.

### 8 9 III. DISCUSSION

#### 10 A. Plaintiffs Fail to State a Claim Against the City

11 The City argues that Plaintiffs' SAC fails to allege facts that sufficiently state a  
12 claim for unreasonable search and seizure because the City's search warrant was  
13 sufficiently particular. (City's Mot. 3.) Accordingly, the City asserts that their search  
14 and seizure was supported by probable cause. (*Id.*) Although Plaintiffs do not oppose  
15 the City's motion, Plaintiffs allege in their SAC that the search warrant was vague and  
16 unreasonable because it failed to "describe things to be seized." (SAC 6.) Plaintiffs  
17 further allege that no illegal methamphetamine substance was found on the property,  
18 and that the chemicals seized were legal and not related to the production of  
19 methamphetamine. (SAC 6-7.)

20 The Fourth Amendment of the United States Constitution requires that a  
21 search warrant describe items to be seized with particularity. U.S. Const. amend. IV.  
22 The purpose of the particularity requirement is to protect those subject to a search  
23 warrant by limiting the searching officer's discretion in seizing items. United States v.  
24 Mann, 389 F.3d 869, 877 (9th Cir. 2004). However, elaborate specificity of items seized  
25 is unnecessary. Id., U.S. v. Hall, 142 F.3d 988 (7th Cir. 1998). An improper search in  
26 violation of the Fourth Amendment can give rise to a civil action to challenge the  
27 validity of the search. Groh v. Ramirez, 540 U.S. 551, 569 (2004).

28 In this case, the search warrant's terms allowed seizure of methamphetamine,

1 other controlled substances, and paraphernalia used in the preparation, manufacturing,  
2 and distribution of methamphetamine. (*City's Mot. Ex. A.*) The warrant included non-  
3 exhaustive lists of laboratory equipment used in the production of methamphetamine  
4 and other dangerous chemicals, such as ether. (*Id.*) The items the City actually seized  
5 under the search warrant included lab equipment and chemicals found on the property.  
6 (SAC 6.) The Court agrees with the City that it was impossible for the officers  
7 executing the search warrant to know the nature of the chemicals seized from the  
8 property without subjecting the chemicals to appropriate off-site testing. Instead, the  
9 warrant properly described items with sufficient particularity and adequately guided the  
10 searching officers.

11 Plaintiffs incorrectly assert that because the items seized were legal for the  
12 average citizen to possess, the seizure was improper. However, items seized under a  
13 valid search warrant may be validly confiscated regardless of their purpose. For  
14 example, the Ninth Circuit has upheld the seizure of camping gear in connection with  
15 a methamphetamine investigation, even though owning camping gear on its own is not  
16 a crime. United States v. Mann, 389 F.3d 869, 878 (9th Cir. 2004). Because Plaintiffs  
17 fail to state adequate grounds for unreasonable search and seizure, the Court **GRANTS**  
18 Defendant City's motion and **DISMISSES** Plaintiffs' search and seizure claim **WITH**  
19 **PREJUDICE**.

20  
21 **B. Plaintiffs' Claim Against the City is Time-Barred**

22 The City next argues that even if Plaintiffs stated a Fourth Amendment claim,  
23 the claim is time-barred. (*City's Mot. 5.*) Plaintiffs do not oppose the City's argument,  
24 but they allege in their SAC that any delay in filing their suit was the City's fault. (SAC  
25 9.)

26 The exclusive vehicle for bringing suit against a local government agency is 42  
27 U.S.C. § 1983. Azul Pacifico, Inc. v. City of Los Angeles, 973 F.2d 704, 705 (9th Cir.  
28 1992). Because 42 U.S.C. § 1983 does not provide its own statute of limitations, the

1 court is instructed to use the state's statute of limitations. Wilson v. Garcia, 471 U.S.  
 2 261, 276-79 (1985). In California, the statute of limitations for personal injury actions  
 3 is two years. Cal. Code Civ. Proc. § 335.1.

4 The issues giving rise to this action against the City took place on December 20,  
 5 1991, over fifteen years ago. Under California law, the statute of limitations expired on  
 6 December 20, 1993. Plaintiffs did not file the instant federal action until March 1,  
 7 2007. (Doc. No. 1.) Plaintiffs articulate no actual reasons for the fifteen year delay in  
 8 filing suit, and provide no legally cognizable arguments as to why the statute of  
 9 limitations should be tolled or extended. The Court has given Plaintiffs two prior  
 10 opportunities to state a claim against the City for the 1991 seizure of their business  
 11 property that is not time-barred. Because, for the third time, Plaintiffs fail to present  
 12 a claim that is not time-barred, the Court **GRANTS** the City's motion and  
 13 **DISMISSES** Plaintiffs' complaint **WITH PREJUDICE**.

14  
 15 **C. The Court Lacks Subject-Matter Jurisdiction Over the Conversion**  
 16 **Claim Against Freeman**

17 Freeman argues that Plaintiffs' conversion claim fails to allege a jurisdictional  
 18 basis. (*Freeman's Mot.* 3.) Plaintiffs disagree and argue that they present a federal  
 19 question, they meet the requirements for diversity jurisdiction, and they meet the  
 20 requirements for supplemental jurisdiction. (*Opp'n* 2-7.) The Court finds that it does  
 21 not have subject matter jurisdiction over Plaintiffs' claims against Defendant Freeman.

22  
 23 **i. *Plaintiffs Fail to Present a Federal Question***

24 Freeman argues that Plaintiffs fail to present a federal question because their  
 25 conversion claim is premised on state law. (*Id.* at 3.) Plaintiffs oppose, contending that  
 26 "even a claim expressly premised on state law may nevertheless raise a federal question  
 27 if the resolution of some federal issue is necessary to the decision of the state claims."  
 28 (*Opp'n* 1; citing Grable, 545 U.S. 308 (2005).)



1 Federal district courts have “original jurisdiction of all civil actions arising under  
2 the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. A federal  
3 court has original jurisdiction over state claims if the state law claims “implicate  
4 significant federal issues.” Grable & Sons Metal Prods v. Darue Eng’g & Mfg., 545 U.S.  
5 308, 312 (2005). Because the claiming party has the right to decide what law to rely  
6 upon for his claim, the court must first determine if the claiming party is able to obtain  
7 any relief under the Constitution or the laws of the United States before it decides that  
8 a claim does not arise under federal question jurisdiction. Bell v. Hood, 327 U.S. 678,  
9 681 (1946).

10 In this case, Plaintiffs do not present a federal question. Plaintiffs never state a  
11 federal law which is necessary to the decision of their state claim, and their claim is  
12 entirely premised on state law. Jurisdictionally, Plaintiffs only mention 28 U.S.C.  
13 § 1331, which simply allows for federal question jurisdiction and nothing more.  
14 Although Plaintiffs cite 42 U.S.C. § 1983, Plaintiffs fail to state how Freeman violated  
15 their civil rights, and simply stating the code section is not enough to state a claim.  
16 Because Plaintiffs fail to articulate any real basis for relief under the Constitution or  
17 laws of the United States, the Court finds that Plaintiffs fail to present a federal  
18 question to support jurisdiction.

19  
20 **ii. Plaintiffs Lack Diversity Jurisdiction**

21 Defendant Freeman argues that Plaintiffs fail to establish diversity jurisdiction  
22 because both Freeman and Plaintiffs are residents of California. (*Freeman Mot.* 3.)  
23 Plaintiffs oppose this argument and claim that they properly meet diversity  
24 requirements because they moved to California from Washington state and neither of  
25 them attended school in California. (*Opp’n* 5-6.) Plaintiffs also include a copy of their  
26 family tree alleging that ancestors residing outside of the United States and/or the state  
27 of California establish diversity. (*Id.* Ex. B.) Finally, Plaintiffs claim that diversity exists  
28 because on September 13, 2001, they were evicted from their home, an event which

1 destroyed “domicile” in California. (*Id.* 6.)

2 District courts have original diversity jurisdiction between citizens of different  
3 states and actions with an amount in controversy over \$75,000. 28 U.S.C. § 1332(a).  
4 The court determines diversity by the states in which United States citizens are  
5 domiciled. Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088, 1091 (9th Cir. 1983).  
6 To support federal diversity jurisdiction, parties must have complete diversity, or all  
7 plaintiffs must be citizens of a different state than all defendants. Allstate Ins. Co. v.  
8 Hughes, 358 F.3d 1089, 1095 (9th Cir. 2004).

9 Here, Plaintiffs fail to meet the requirements for diversity jurisdiction. To  
10 establish diversity, Plaintiffs must be residents of a different state than Freeman.  
11 However, the caption of Plaintiffs’ complaint shows Plaintiffs’ address in California, and  
12 Freeman’s storage company is a California business. Since Plaintiffs and Freeman both  
13 have California domiciles, complete diversity does not exist.

14 Unfortunately for Plaintiffs, their other attempts to establish diversity—stating  
15 that they moved to California from Washington; not attending school in California;  
16 eviction from their California home; providing out-of-state family tree—do not amount  
17 to diversity jurisdiction under any interpretation of federal law. Therefore, the Court  
18 agrees with Freeman that Plaintiffs fail to establish diversity jurisdiction.

19

20 ***iii. Plaintiffs Fail to Show a Basis for Supplemental Jurisdiction***

21 Defendant Freeman states that Plaintiffs fail to establish supplemental  
22 jurisdiction because the allegations against him arise from a separate case and  
23 controversy than the actions against the other defendants. (*Freeman Mot.* 3.) Plaintiffs  
24 oppose, arguing that they have established a basis for supplemental jurisdiction because  
25 all defendants were responsible for the loss of Plaintiffs’ business property. (*Opp’n* 7-8.)

26 If district courts have original jurisdiction over a civil action, “they have  
27 supplemental jurisdiction over all other claims that are so related to claims in the action  
28 within such original jurisdiction that they form part of the same case or controversy.”



1 28 U.S.C. § 1367(a). In order for the issues to be part of the same case or controversy,  
 2 they must arise from a "common nucleus of operative fact." Exxon Mobile Corp. v.  
 3 Allapattah Servs., Inc., 545 U.S. 546, 580 (2005).

4 The Court agrees with Freeman that Plaintiffs fail to state a basis for  
 5 supplemental jurisdiction. Although Plaintiffs argue that the series of occurrences  
 6 leading to the conversion claim against Freeman began in November 1994, Freeman's  
 7 company had no involvement with Plaintiffs until they rented a storage unit on  
 8 September 19, 2001. (SAC 3.) Simply, Freeman's auction of Plaintiffs' property was  
 9 entirely unrelated to the government's alleged seizure of Plaintiffs' property nearly ten  
 10 years earlier.

11 Plaintiffs also argue that their claims against all Defendants are similar to a case  
 12 where several defendants were accused of stealing a common satellite signal. Direct v.  
 13 Loussaert, 218 F.R.D. 639 (S.D. Iowa 2003) (allowing multiple defendant lawsuit  
 14 because all defendants purchased the same satellite stealing equipment). The  
 15 relationship of events in Direct, however, are unrelated to the factual circumstances of  
 16 Plaintiffs' case. Here, the only common element between the government's 1991  
 17 seizure and Freeman's 2003 auction is that Plaintiffs were deprived of property. But  
 18 because Plaintiffs' property was taken by different people at different times, there is no  
 19 common nucleus of operative fact. Therefore, the Court does not find any factual basis  
 20 to conclude that supplemental jurisdiction exists in this case. Accordingly, the Court  
 21 **GRANTS** Freeman's Motion and dismisses Plaintiffs' claims **WITH PREJUDICE**.<sup>2</sup>

#### 22 23 **IV. CONCLUSION**

24 Plaintiffs' Second Amended Complaint represents their third attempt to petition  
 25 this Court for relief. Like each of the prior attempts, Plaintiffs have not been able to

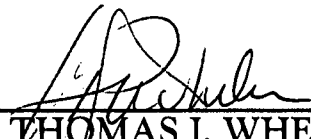
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26  
 27 <sup>2</sup>Regardless of whether supplemental jurisdiction was initially proper by way of Plaintiffs'  
 28 federal claims against the City and DEA, those claims have been dismissed and the Court  
 declines supplemental jurisdiction under 28 U.S.C. § 1367(c) ("The district courts may decline  
 to exercise supplemental jurisdiction over a claim... if— ... (3) the district court has dismissed  
 all claims over which it has original jurisdiction.").

1 allege facts sufficient to state a valid cause of action against Defendant City and  
2 Defendant Freeman. The Court believes that affording Plaintiffs additional  
3 opportunities to state a claim would be futile. Because Plaintiffs' claims are barred by  
4 the statute of limitations and lack subject matter jurisdiction, the Court **GRANTS**  
5 both Defendant City's and Defendant Freeman's motions to dismiss **WITH**  
6 **PREJUDICE**. (Doc. Nos. 55, 57.) Both Defendants are **DISMISSED** from the case.

7  
8 **IT IS SO ORDERED.**

9  
10 Dated: March 17, 2008

  
11 Hon. THOMAS J. WHELAN  
12 United States District Court  
13 Southern District of California  
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